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**In the Supreme Court of the
United States**

October Term, 1970
No. 538

70 - 6

NELLIE SWARB et al.,

Appellants

v.

WILLIAM M. LENNOX et al.,

Appellees

*On Appeal From the United States District Court
for the Eastern District of Pennsylvania.*

**BRIEF OF AMICUS CURIAE
PENNSYLVANIA LAND TITLE
ASSOCIATION**

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INTEREST OF AMICUS CURIAE PENNSYLVANIA. LAND TITLE ASSOCIATION

The Pennsylvania Land Title Association is an association whose membership is made up of corporate members (companies authorized to insure titles to real estate within the Commonwealth of Pennsylvania), firm members (mostly law firms, real estate firms and engineering firms) and individual members (attorneys, realtors, bankers and persons engaged in the business of insuring titles to real estate).

All parties have consented to the filing of this brief and the written consents have been filed with the Clerk of the Supreme Court. Because of the state wide and even nation wide implications of the instant case, the Pennsylvania Land Title Association considered itself to be a representative and concerned *amicus*.

The Pennsylvania Land Title Association has declared in its Code of Ethics " . . . that land is that foundation upon which the very existence of our nation is secured . . . " and that " . . . the policy of our nation, expressed through its laws, is wisely dedicated to promote the free alienation and widespread private ownership of land . . . " . . . and the accurate, expeditious and secure alienation of land and interest therein . . . "

The Pennsylvania Land Title Association's members insure titles to real estate within the Commonwealth of Pennsylvania and are, therefore, vitally concerned with any action, legislative or judicial, which establishes, changes or construes the law affecting real estate.

For approximately 165 years, the practice of passage of title by judicial sale, instituted originally by confession of judgment as contained in a credit document (note, bond,

mortgage and warrant) has been widely used, unquestioned and judicially recognized. The members of the Pennsylvania Land Title Association have relied on this practice and had every legal right to rely on it. The instant case, conceivably, could result in this Court holding such practice invalid.

The concern of the title industry is not only that of one threatened with total destruction in case a decision were rendered with retroactive effect but also that of a highly interested segment of the business community which is dedicated to the stability of our real estate laws, orderly private ownership and alienability of real estate and interests therein. In this regard, the Pennsylvania Land Title Association is representing the interests not only of itself and its members, but also hundreds of thousands of owners of real property, large and small, the title to whose properties could be placed in instant jeopardy by any order of this Court that could be construed as retroactive.

The purpose of this brief is to invite the attention of the Court to the chaos, disruption and hardship which could result from any decision in the instant case that would be other than prospective in effect.

SUMMARY OF THE ARGUMENT

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The Court will decide in this case the fate of entry of judgment by confession pursuant to authority contained in written documents pursuant to established and recognized practice in Pennsylvania. The Court may decide that the entire practice is valid and constitutional. Conversely the Court may find that the procedure is totally unconstitutional or valid only in certain situations or as to certain parties. It is our position, however, that should the decision of this court in any way limit or extinguish the right to execute against real estate in an action commenced by a confession of judgment, such decision must be prospective in operation.

The procedure by which judgments are confessed has been in existence in Pennsylvania since 1806. Its validity has been accepted and relied on. Great numbers of judgments had been entered by confession each year. Many of these judgments lead to the issuance of writs of execution and subsequently to the passage of title to real estate through a sheriff's sale. During the 165 years in which this practice has prevailed, a large percentage of titles to land in Pennsylvania have passed through this procedure. Any decision declaring confessions of judgment invalid which would become retroactive in effect would place a cloud on the title of any real estate which had in its chain of title an execution and sale commenced by the exercise of this statutory procedure.

This Court has the power to provide whether its decision will be applied retroactively or prospectively. The right of prospective overruling has long been recognized in the state courts, *Bingham v. Miller*, 17 Ohio 445 (1848), *State v. Bell*, 136 N.C. 674, 49 S.E. 163 (1904). This Court has also recognized its discretionary right to endow a ruling with purely

viding and restricting creditors' remedies and debtors' rights.

The aggregate finance charges for various classes of these loans must be sufficient to cover the cost of funds to the lender, the cost of making, administering and collecting loans, and the losses incurred, together with a profit sufficient to induce the lender to undertake and carry on the business. An increase in the cost of lending or in the ratio of losses to loans will either increase the finance charge which must be borne by the consumers who repay the loans, or eliminate from the category of prospective borrowers or purchasers those persons presenting the highest cost of collection or the highest risk of loss. An increase in the finance charge will impose an additional burden on the vast majority of consumers who repay their loans without delay or default. An increase in the qualifications of prospective customers will compel those eliminated from consideration by any class of lenders to go to higher cost lenders, possibly to loan sharks, or to go without the consumer goods or home improvements they would like to buy.³

Achieving and maintaining a fair and acceptable balance between the interests of borrowers and of lenders in this situation is essential, but it is not easy or simple.

The banking industry is concerned over the possibility that the many interrelated factors which must be considered in order to achieve and maintain such

³ See *The Impact of a Consumer Credit Interest Limitation Law, Washington State: Initiative 245*, Graduate School of Business Administration, University of Washington, Seattle, Washington, 1971.

a balance may not be taken into account in this case⁴ and other cases⁵ involving attempts to invalidate significant elements of this balanced consumer financing structure on broad constitutional grounds.

CURRENT LEGISLATION

The banking industry is convinced that a desirable balance between the interests of borrowers and of lenders can be achieved and maintained better through the legislative process than through litigation based on broad constitutional principles, which may not be susceptible of flexible application to particular circumstances, and which, in any event, cannot affirmatively amend statutory provisions, so as to compensate for changes made in related statutes by judicial interpretation or invalidation.

⁴ The evidence in this case indicates this danger. Aside from a stipulation as to what the 47 plaintiffs would testify, if called, and another providing for the admissibility of a study which included information about 245 Philadelphia debtors, the evidence consisted of the testimony of one individual debtor, who explained her own lack of understanding of the effect of a confession of judgment clause even though her lawyer had explained it to her in connection with a title closing, the testimony of a detective in the District Attorney's office, who reported on what debtors had told him about their understanding of such clauses, and the testimony of an officer in a consumer finance company, who reported on the statements he made to borrowers as to the effect of such clauses. Without questioning the sufficiency of this evidence to support the rulings of the District Court in this case, it seems completely inadequate for a sweeping revision of the consumer lending field through decisions based on constitutional considerations, and it seems most unlikely that any legislature would make any substantial change in law on the basis of such meager evidence.

⁵ See, for example, *Fuentes v. Shevin*, U. S. Supreme Court, October Term, 1971, No. 70-5039; *Osmond v. Spence*, U. S. Supreme Court, October Term, 1971, No. 70-291; *Overmyer v. Frick*, U.S. Supreme Court, October Term, 1971, No. 69-5.

The consumer lending business, including mortgage lending, involves a closely interrelated series of rights and obligations which cannot be treated in isolation. Eligibility of borrowers, interest rates, security requirements, collection practices—all constitute a single integrated structure, and any change in one element may make it desirable or essential to make compensating changes in other elements.

This consumer lending structure varies greatly from state to state. Pennsylvania, which permits a confession of judgment procedure, has no garnishment statute. The reverse is true of many states. The Commission on Uniform State Laws, in preparing the Uniform Consumer Credit Code—a comprehensive package program—made a number of correlated changes in state laws—for example, raising interest rates substantially and cutting down creditors' remedies.⁶

A legislature can develop all the facts—legal, economic, sociological and moral—needed to reach a sound balance of the competing pressures and interests.⁷ A legislature can also change statutory benefits and burdens in various elements of the consumer lending structure to accommodate the changes it makes in other elements in the structure. A court cannot amend

⁶ This statement is true for the majority of states. However, the effect of adoption of the Uniform Consumer Credit Code would be somewhat different in almost every state, because of the differences in existing state law. In some states the Uniform Consumer Credit Code's 36% interest rate would result in a reduction from the rates permitted under state law; in most states some of the moderate and restrained creditors' remedies provided by the Uniform Consumer Credit Code would seem harsh compared with that state's provisions on that particular creditors' remedy.

⁷ See footnote 3 above.

usury statutes and change maximum interest rates as the Uniform Consumer Credit Code would do; a court cannot amend the National Bank Act and increase or decrease the proportion of the appraised value of a house that a national bank may lend to the purchaser of the house; a court cannot increase or decrease the amounts small loan companies, credit unions, savings institutions, or commercial banks may lend on a consumer or mortgage loan.

It was because of these considerations that the resolution of the major political issues were vested in the Congress and the state legislatures by the Constitution of the United States and of the constitutions of the several states. And it was because of these considerations that courts, both Federal and state, have generally, and wisely, felt it appropriate to exercise restraint in carrying out their vital function of invalidating legislation on the ground of constitutional inhibitions.

The Congress and state legislatures have felt the need for action in this field, and so have Federal and state courts and administrative agencies.

During 1969 and 1970 hundreds of statutes were enacted by state legislatures affecting creditors' remedies and debtors' rights. Six states have enacted the Uniform Consumer Credit Code.⁸ Many states have also established special committees or commissions to study these issues and to make recommendations to their state legislatures.⁹

⁸ Colorado (1971), Idaho (1971), Indiana (1971), Oklahoma (1969), Utah (1969), Wyoming (1971).

⁹ The courts have also been active. This Court, in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), and many state courts have given impetus to legislative consideration of these issues.

The principal Federal statute in the field is the Consumer Credit Protection Act (82 Stat. 146, 15 U.S.C. 1601), enacted May 29, 1968, after a series of extensive hearings beginning in 1960. Title I of this act, the Truth in Lending Act, provided for consumer credit cost disclosure; Title II prohibited extortionate credit transactions; Title III contained restrictions on the garnishment of wages and salaries; and, Title IV created a National Commission on Consumer Finance.

In 1970, additional consumer legislation was enacted—the Fair Credit Reporting Act (Title VI, P.L. 91-508) and a prohibition on distribution of unsolicited credit cards and other credit card provisions (Title V, P.L. 91-508).

NATIONAL COMMISSION ON CONSUMER FINANCE

One of the major provisions of the Consumer Credit Protection Act was Title IV, which created the National Commission on Consumer Finance. This Commission consists of three members of the U.S. Senate, three members of the U.S. House of Representatives, and three private citizens appointed by the President. The Commission was directed to "study and appraise the function and structure of the consumer finance industry, as well as credit card transactions generally". The Commission was particularly charged with the duty of studying:

- "(1) The adequacy of existing arrangements to provide consumer credit at reasonable rates.
- "(2) The adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair practices, and insure the informed use of consumer credit.

"(3) The desirability of Federal chartering of consumer finance companies, or other Federal regulatory measures."

The Commission was required to report by January 1, 1971, later extended to July 1, 1972 (P.L. 91-344).

The Commission has undertaken an extensive research program, which was set forth in its release of March 18, 1971, a copy of which is attached as Exhibit A.

As part of its program, the Commission recently prepared and sent to thousands of credit grantors, including over 1,200 commercial banks, questionnaires on "Consumer Credit Collection Practices and Creditors' Remedies". (Extracts from the questionnaire sent to commercial banks are attached as Exhibit B.) The aims of the Commission in making this survey were stated by the Commission's Executive Director, Mr. Robert L. Meade, as follows:

"In view of the Commission's desire to appraise objectively and completely all relevant information, the questionnaire has been designed with three aims. *First*, to enable the Commission to understand thoroughly the normal business practices utilized in collecting debts. *Secondly*, to permit the Commission to establish the extent and frequency of use of certain collection practices. *Third*, to ask your assistance in relating to the Commission the experience of your institution in a state or states whose laws either prohibit or restrict certain contractual terms relating to creditors' remedies and collection practices generally, in order that the Commission may ascertain what actual effects, if any, may be expected in the future if such limitations were adopted more widely."

The information obtained by the National Commission on Consumer Finance, as a result of this survey and other studies it is making, is considered necessary by the Congress as the basis for further legislation in this field.¹⁰ It is submitted that the same information is necessary before broad or radical changes in the consumer and mortgage lending field are made by judicial action.

CONCLUSION.

The American Bankers Association moves for leave to file a brief in this case as *amicus curiae*, in support of the rulings of the District Court indicated above, and in opposition to proposals to extend the scope of the decision in this case beyond the rulings of the District Court.

Respectfully submitted,

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September 30, 1971

¹⁰ Even after the extensive consideration over a period of eight years which was given to the Truth in Lending Act, unresolved questions and difficulties in interpretation of the statute and the Federal Reserve Board regulations issued under it have been the basis for many suits, in the nature of class actions, against banks and others for alleged violations (some purely technical, some of minimal significance) of the Truth in Lending Act or other related statutes, involving claims in amounts up to millions and tens of millions of dollars. These cases make it clear that inadequately considered actions in this field can have serious consequences to banks and to the banking system.

EXHIBIT A

March-18, 1971

**OUTLINE OF RESEARCH PROGRAM
NATIONAL COMMISSION ON CONSUMER FINANCE**

1. The Problem and the Study
2. Structure of the Industry
3. Regulatory Mechanisms
4. Availability
5. Reasonable Rates
6. Disclosure
7. Unfair Practices
8. Effectiveness of Regulatory and Supervisory Mechanisms
9. Information and Education
10. Credit Insurance
11. Federal Chartering
12. The Future of Consumer Credit
13. Summary—Conclusions—Recommendations

* * * * *

**NATIONAL COMMISSION ON CONSUMER FINANCE REPORT
ON CURRENT STUDY PROJECTS**

The National Commission on Consumer Finance was directed by Congress to "study and appraise the functioning and structure of the consumer finance industry, as well as consumer transactions generally" and to report its findings on:

- (1) the adequacy of existing arrangements to provide consumer credit at reasonable rates;
- (2) the adequacy of existing supervisory and regulatory mechanisms to protect the public from unfair

practices and to insure the informed use of consumer credit; and

- (3) the desirability of Federal chartering of consumer finance companies, or other Federal regulatory measures.

To do this adequately, the Commission developed the attached outline based on the statute to serve as a framework for its research.

Since much of the information needed for its studies has been unavailable or in unusable form, the Commission has launched several data collection projects of its own. These and other Commission studies are currently under way.

Traditionally, consumer credit legislation has focused on a specific problem with the idea of correcting a specific abuse. Repeatedly, legislation has been drafted or amended on the basis of these assumptions despite the fact that few if any facts are available on the potential effects of proposals. But this Commission, from the data it gathers, will try to assess the many variables that affect any changes in the "... functioning and structure of the consumer finance industry." Such assessments should provide a basis for legislative bodies, both state and national, to predict with better accuracy the effect on credit grantors and users of proposed laws and regulations to consumer credit. Future legislative and regulatory efforts may thus occur in a context of overall objectives sought and the predictive consequence of particular legislation on these objectives.

The complexity of the consumer finance industry is brought into sharp focus by the Commission's first area of inquiry: "the adequacy of existing arrangements to provide consumer credit at reasonable rates." It has often been pointed out that credit laws are a patchwork of Federal and state legislation, varying from moderate to extensive state-by-state. The variations among state laws

may well be a vital research tool in the Commission's study. Thus, to assess the potential impact of any change in the law on credit grantors and users, the Commission plans to determine the price and amount of credit on a state-by-state basis, including credit generated by banks, retail establishments, credit unions, and finance companies. When these data are gathered, the Commission will attempt to measure the effects of local rate ceilings; state licensing requirements that limit entry of new competition in the consumer finance market; branch banking laws and regulations; and the existence or nonexistence of certain creditor and debtor remedies on the price and amount of credit in each state. To complete this analysis, the Commission will also analyze the statutes and available administrative and case law of each state to determine:

- (1) the rate ceilings for each category of credit (i.e., small loans, retail installments sales, etc.) in each state;
- (2) the existence or nonexistence of convenience and advantage statutes in each state and whether such statutes are, in fact, barriers to creditor entry in the small loan credit market;
- (3) the existence or nonexistence of branch banking provisions and whether these provisions are barriers to entry; and
- (4) which creditor and/or debtor remedies are permitted in each state and how these remedies affect the availability of consumer credit.

To put these data in perspective as well as to fulfill its Congressional mandate, the Commission must also try to determine which segment of the community cannot obtain credit at existing rates and why. After these data have been gathered and analyzed, the Commission can begin to assess the adequacy of available consumer credit at reasonable rates.

The following is a listing, together with a brief description, of Commission research projects now in progress. Neither the descriptions nor the order are indicative of the relative importance of the studies.

The Commission is conducting a study of the pricing process in the consumer credit industry to try to assess the effect of state laws, government regulation, market structure and demographic and other factors on the price and availability of consumer credit. The survey will collect data on a state-by-state basis (probably using the fourth calendar quarter of 1970) for (1) the total amount of consumer installment credit extended and outstanding, and (2) the average price of such credit. This is the first time that any agency—public or private—has collected finance rate data on a national or state basis for each category of consumer installment credit and the first time that extensions and outstandings have been collected on a state-by-state basis.

This project will enable the Commission to analyze differences in the price and availability of consumer installment credit as they relate to differing state laws (i.e., analysis of the effects of rate ceilings, restrictions on entry, etc.). It will also be invaluable as the Commission attempts to appraise "the functioning and structure of the consumer finance industry" and "the adequacy of existing arrangements to provide consumer credit at reasonable rates." This study should give the Commission insight as to the desirability of Federal chartering.

Another area of Commission research concerns creditors' remedies. During the Commission hearing in June 1970, several witnesses representing consumer interests recommended curtailment or abolishment of certain collection practices, creditors' remedies, and contractual provisions. To prepare for a possible

hearing at which credit industry representatives could discuss these proposals, Commission staff designed a comprehensive data-gathering outline to be completed by a sample of credit grantors representing the existing categories of consumer credit. Basically, the outline was prepared to help the Commission understand practices normally used in debt collection; to compile data establishing the extent and frequency of the use of such practices; and to document the experience of various credit grantors in states which have either abolished or restricted certain creditors' remedies, collection practices or contractual provisions.

The Commission expects responses to this outline to help it gauge the possible effect upon the credit granting industry if certain practices or laws were abolished or changed. For example, would abolishing the holder-in-due-course defense make credit less available or more costly? Would it exclude low income consumers from the legitimate credit market? Would it change credit granting criteria and cut off credit to a segment of the population, other than low income consumers, to which it is presently available?

The Commission believes that it is breaking new ground with this study since to its knowledge no analyses have previously been undertaken to determine what occurs when laws restricting debt collection methods have been enacted.

Another offshoot of the June hearings is a study of automobile repossessions in the District of Columbia. This project was designed to determine the number of repossessions, the nature of repossession practices, and the effects of repossession—particularly deficiency judgments. Staff researchers were able to trace records of 106 automobiles through court and Motor Vehicle Department files from first financing

through repossession, wholesale resale (which establishes the deficiency) and the ultimate retail resale. In each case, actual sale price and NADA Guidebook wholesale and retail values were recorded and the results are now being tabulated for study. The Commission hopes that a comparison of these values will indicate whether "commercially reasonable sales" have taken place. These data, plus data derived from FTC studies designed from the Commission's automobile repossession study format and now being completed in several U. S. cities, should provide information indicating if alternative approaches to the repossession-deficiency process should be considered.

The Commission staff is closely analyzing the Federal Reserve Awareness studies of 1969 and 1970 to assess more specifically the effects of the Truth in Lending legislation on the public. A questionnaire was designed and sent for completion to the nine agencies charged with enforcing Title I of the Consumer Credit Protection Act. Results of this questionnaire should assist in further assessment of the effectiveness of Truth in Lending, as well as the effectiveness of the enforcement activities of the nine agencies.

The Commission has contracted for a study in California of awareness, attitudes, and use of credit by all income groups and by a special sample of low income blacks. This study will attempt to relate the consumer's awareness of finance charges and rates to the decision to purchase goods on a cash or credit basis. It will also determine if consumers consider planning, comparison shopping and present credit obligations in making their purchasing decisions. Data obtained from this research will be compared with the Federal Reserve Awareness study of December 1970 and with a similar study completed by a Stanford doctoral student in June 1969.

The California study and Commission staff analysis of the Federal Reserve survey should help the Commission decide whether "existing regulatory and supervisory mechanisms . . . insure the informed use of consumer credit," and whether educational and counseling programs are needed to supplement Truth in Lending.

The Commission has contracted to develop a credit-scoring system for lenders who extend credit to low income borrowers. Currently used systems for screening credit applicants seem to lack the kind of criteria that might provide creditors with information to make better judgments between "good" and "bad" credit risks at the low income level. This project may enable the Commission to assess how much the limitations of present systems restrict credit and to suggest recommendations concerning the design of credit-scoring systems to accommodate more fairly and accurately the low income segments of our population. This study partially answers questions concerning the "adequacy of existing arrangements to provide consumer credit at reasonable rates."

In a related area, the Commission has contracted to analyze the debt position of families in poverty areas. This study is intended to help ascertain whether poverty neighborhood consumers whose income, stability of income, and the liquid assets resemble nonpoverty area residents can get credit as readily in the same amounts as their nonpoverty area counterparts. It will also explore the possibility of variances in the availability of credit as between racial groups in the poverty and nonpoverty areas.

The Commission has initiated a pilot study to determine what happens to applicants rejected for retail credit by large retailers. This study should provide some indication of the extent to which the consumer's

basic need for retail credit was genuine in the sense that his drive for purchase was strong enough to motivate him to search for other sources of credit. The study should also disclose what other sources of credit were approached and the socio-economic characteristics of consumers denied credit by other such retailers.

The Commission is currently attempting to compile and evaluate experimental credit granting programs now in operation in the United States. Sources of credit for these programs include low income credit unions, banks and retail merchants. The Commission is also compiling and evaluating credit counseling and educational programs.

The Commission has queried all state and local bar groups as to their views and activities regarding various debt collection practices. Responses are currently being examined.

Other projects in preliminary stages are:

A study of the cost structure of consumer finance companies and the retail industry.

A study of how low rate ceilings on credit affect the price of retail goods.

A theoretical study of imperfections and competition in consumer credit markets.

A history of rate making and regulation.

FORM L-11

NATIONAL COMMISSION ON CONSUMER FINANCE	OMB NUMBER : 155-571803 EXPIRES : December 31, 1971
SURVEY OF CONSUMER CREDIT COLLECTION PRACTICES AND CREDITORS REMEDIES	DUE DATE : October 1, 1971
	IDENTIFICATION NUMBER :
COMMERCIAL BANKS	

INSTRUCTIONS

Please read all instructions before filling out the enclosed questionnaire.

This questionnaire is designed (1) to provide the Commission with a summary of the normal business practices utilized in collecting consumer debts; (2) to permit the Commission to determine the extent and frequency of use of certain consumer credit collection practices; and (3) to determine the experience of creditors in a state or states whose laws either prohibit or restrict certain contractual terms relating to creditors' remedies and consumer credit collection practices generally.

Consumer credit includes all short and intermediate term cash and sale credit that is extended through regular business channels to finance the purchase of commodities and services for personal consumption, or to refinance debts incurred for such purposes. It includes credit extended to individuals for household, family and other personal expenditures and excludes long term real estate mortgage credit as well as commercial, industrial, and other business loans and loans to farmers for agricultural purposes. Installment credit is defined as all consumer credit that is scheduled to be repaid in two or more payments.

Note that if information requested for any item is not available from your records, your best estimate is acceptable and should be reported. If information is accessible, sampling techniques may be used to complete the questionnaire. If you sample, briefly describe the method utilized.

Parts I, II and III of the questionnaire should be completed and returned in the enclosed postage-paid envelope to the National Commission on Consumer Finance, 1016-16th Street, N.W., Rm. 300, Washington, D. C. 20036, no later than October 1, 1971. Although your bank may not be able to supply all of the items of information sought, the Commission nevertheless requests return of the questionnaire on the above date. Response to this inquiry is required by law under Title IV of the Consumer Credit Protection Act (82 Stat. 165). By the same law, your report is confidential. Please complete the questionnaire to the extent possible for each type of credit which your bank extends.

Part I is designed to provide background information concerning the size and diversity of your bank's consumer credit operation and its geographic scope.

Part II of the questionnaire is designed to provide the Commission with a broad overview of your bank's normal collection activity in the consumer credit department(s). This includes measures of delinquency, default, and frequency of use of various collection practices.

Part III is intended to provide the Commission with data concerning your bank's experience in the use of the various creditors' remedies and contractual provisions available to you.

INSTRUCTIONS (CONTINUED)

Specific instructions accompany each question. Most of the questions deal with collection practices, contract provisions, and/or creditors' remedies as they relate to six basic types of consumer credit. Those six types are:

- Automobile - Purchased Paper
- Automobile - Direct Loan for Purchase
- Sale Credit - Credit Card
- Other Consumer Goods - Purchased Paper
- Other Consumer Goods - Direct Loan for Purchase
- Personal Loan

For these purposes, "Other Consumer Goods" excludes automobiles, mobile homes, boats, aircraft, and recreational vehicles. This category will typically include furniture, appliances, sporting goods, jewelry, silver, automotive accessories, and similar items as well as consumer services such as medical, dental, and hospital bills.

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State in which chartered

Part I - Type of Credit Extended

Please indicate below the number and dollar amount of accounts outstanding at 6/30/71 for each of the types of consumer credit your bank extends. If the information is not available as of 6/30/71, please furnish it as of the most recent date available and indicate that date here. In the third column, for indirect credit please list the state or states (other than the state in which your banks is chartered) in which dealers from whom you purchase contracts are located.

	Number of Accounts With Balances	Dollar Amount Outstanding	States in Which Dealers are Located
1. Automobile Financing			
a. Purchased Paper (Indirect)		\$	
b. Direct Loan for Purchase		\$	
2. Consumer Goods Financing Involving Purchases of Goods other than Automobiles, Mobile Homes, Boats, Aircraft & Recreational Vehicles			
a. Sale Credit - Credit Cards		\$	
b. Purchased Paper (Indirect)		\$	
c. Direct Loan for Purchase		\$	
3. Personal Loans		\$	

Express each answer as a percentage of total for type of credit to which it relates, not to total consumer credit. (e.g., if routine delinquency notices were sent to 20 out of 200 obligors on Automobile Purchased Paper, the answer to question 1a in flight column would be 10%)

FOR THE TYPE OF CONSUMER CREDIT LISTED IN EACH COLUMN PLEASE INDICATE:

PART II - COLLECTION PRACTICE AND PROCEDURES

	AUTOMOBILE FINANCING		CONSUMER GOODS FINANCING		PERSONAL LOANS	
	PURCHASED PAPER (Indirect)	DIRECT LOAN	PURCHASED PAPER (Indirect)		DIRECT LOAN	
			Secured	Unsecured	Secured	Unsecured
1a. Percentage of number of accounts with balances outstanding as of June 30, 1971, which involve routine mailing of delinquency notices to debtor.	\$	\$	\$	\$	\$	\$
1b. Percentage of dollar amount outstanding as of June 30, 1971 or of annual dollar volume of accounts for the year then ended which involve routine mailing of delinquency notices to debtor. Indicate basis used: Dollar amount outstanding _____ Annual dollar volume _____	\$	\$	\$	\$	\$	\$
2a. Percentage of number of accounts with balances outstanding as of June 30, 1971, which involve collection efforts beyond routine delinquency notices mailed to debtor (e.g. turning over an account to your collection department or to an outside collector).	\$	\$	\$	\$	\$	\$
2b. Percentage of dollar amount outstanding as of June 30, 1971, or of annual dollar volume of accounts for the year then ended which involve collection efforts beyond routine delinquency notices mailed to debtor. Indicate basis used: Dollar amount outstanding _____ Annual dollar volume _____	\$	\$	\$	\$	\$	\$
3a. Percentage of number of accounts with balances outstanding as of June 30, 1971, which have been declared to be in default and involved collection efforts beyond routine delinquency notices mailed to debtor.	\$	\$	\$	\$	\$	\$
3b. Percentage of dollar amount outstanding as of June 30, 1971, or of annual dollar volume of accounts for the year then ended which have been declared to be in default and involved collection efforts beyond routine delinquency notices mailed to debtor. Indicate basis used: Dollar amount outstanding _____ Annual dollar volume _____	\$	\$	\$	\$	\$	\$

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- Listed in the left margin below are nine bases for taking special action beyond routine delinquency notices to collect an account. For the type of consumer credit listed in each column please rank on the basis of your experience, the reasons for taking action in ascending order of frequency of occurrence, i.e. the most frequent are to be ranked "1", and the least frequent are to be ranked "9".

	Automobile Financing				Consumer Goods Financing Involving Individual Purchases of Goods Other Than Automobiles, Mobile Homes, Boats, Aircraft and Recreational Vehicles			
	Purchased Paper (Indirect)	Direct Loan for Purchase	Rank	Rank	Sale Credit-Credit Cards	Direct Loan for Purchase	Purchased Paper (Indirect)	Rank
a. Failure to keep collateral insured								
b. Removal of Property from State								
c. Delinquent Payments								
1 to 29 days								
30 to 59 days								
60 to 89 days								
over 90 days								
d. Creditor's Insecurity								
e. Skip								
f. Others (e.g. bankruptcy, irresponsibility, etc.)								
Specify _____								

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PART III - CONTRACT PROVISIONS AND CREDITORS' REMEDIES

17a. Where permitted by law, do the majority of the consumer credit contracts which you purchase include the following contract provisions? (check appropriate box)

Type of Credit	State from which you purchase contracts	Waiver of Buyer's Defenses		Acceleration Provisions		Wage Assignments		Cross Collateral		Confessions of Judgment		Attorneys Fees		Security Interests or Repossessions		Others**	
		Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Automobile																	
Purchased Paper																	
Other Consumer Goods																	

**Include state in which your bank is chartered

**Specify

COMMERCIAL BANKS

State in which chartered

17b. Where permitted by law, do you include the following contractual provisions in substantially all of your consumer credit contracts and/or notes? (check appropriate box)

Type of Credit	Waiver of Buyer's Defenses		Acceleration Provisions		Wage Assignments		Cross Collateral		Confessions of Judgment		Attorneys Fees		Security Interests or Repossessions		Others*	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Direct Loan - Automobile Purchase	N.A.	N.A.														
Direct Loan - Other Consumer Goods Purchase	N.A.	N.A.														
Sale Credit on Credit Card																
Personal Loan	N.A.	N.A.														

*Specify

COMMERCIAL BANKS

21. With regard to contract clauses that you invoke in formal legal proceedings, indicate by checking the appropriate box whether you find these clauses shown in the column headings to be substantially useful in collection, moderately useful in collection, or unnecessary to collection. Where not permitted by law, insert the letters "n.a."

Type of Credit	Degree of Usefulness	Waiver of Buyer Defenses	Acceleration Provisions	Wage Assignments	Cross Collateral	Confessions of Judgment	Attorneys Fees	Security Interests or Repossessions	Others*
Automobile - Purchased Paper	Substantial								
	Moderate								
	Unnecessary								
Automobile - Direct Loan	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							
for Purchase Sale Credit - Credit Cards	Substantial								
	Moderate								
	Unnecessary								
Other Consumer Goods-Purchased Paper	Substantial								
	Moderate								
	Unnecessary								
Other Consumer Goods-Direct Loan	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							
for Purchase Personal Loans	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							

If you have classified any of the above clauses as "substantially useful," state briefly your reasons.

Specify

COMMERCIAL BANKS

22. If you are not permitted to use one or more of the contract clauses shown in the column headings in ANY of your consumer credit transactions, indicate by checking the appropriate box whether you would consider the availability of such clause(s) to be substantially useful in collection, moderately useful in collection, or unnecessary to collection. Where permitted by law, insert the letters "N.A."

Type of Credit	Degree of Usefulness	Waiver of Buyer Defenses	Acceleration Provisions	Wage Assignments	Gross Collateral	Confessions of Judgment	Attorneys' Fees	Security Interests or Repossessions	Others*
Automobile-Purchased Paper	Substantial								
	Moderate								
	Unnecessary								
Automobile-Direct Loan for Purchase	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							
Sales Credit-Credit Cards	Substantial								
	Moderate								
	Unnecessary								
Other Consumer Goods-Purchased Paper	Substantial								
	Moderate								
	Unnecessary								
Other Consumer Goods-Direct Loan for Purchase	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							
Personal Loans	Substantial	N.A.							
	Moderate	N.A.							
	Unnecessary	N.A.							

If you have classified any of the above clauses as "substantially useful," state briefly your reasons.

Specify

COMMERCIAL BANKS

27. For each of the four categories of consumer credit transactions listed in the column headings below, if your bank had to rely primarily on one of the contract provisions or creditor remedies listed, indicate (by checking the appropriate box) which one you feel is most essential to your collection activity. (Check only one in each column.)

	Direct Loan Secured	Direct Loan Unsecured	Purchased Paper Secured	Purchased Paper Unsecured
Contract Provisions:				
Waiver of Buyer Defenses	N.A.	N.A.		
Acceleration Provision				
Wage Assignment				
Cross Collateral		N.A.		N.A.
Confession of Judgment				
Attorney's Fees				
Security Interest (Repossession)		N.A.		N.A.
Creditor Remedies:				
Deficiency Judgment		N.A.		N.A.
Garnishment				
Holder in Due Course Defenses	N.A.	N.A.		
Levy on Personal Property				
Set-off				
Body Attachment				

State briefly your reasons for each choice.

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28. If you are doing business in a state or states which through legislation, court decision or otherwise have restricted or abolished those contract provisions and creditor remedies listed in Question 27, in your judgment has the inhibiting legislation resulted in:

- a. a decrease in the availability of credit? yes no
- b. an increase in credit or collection costs? yes no

Please explain making reference where possible to factors such as 1) availability of credit - percentage of rejected applicants, security requirements, increase in rate, change in other terms; 2) credit and collection costs - delinquency and default rates, screening of applicants, collection of debts. If there have been no changes in availability or costs - briefly summarize the steps taken to avoid such action:

29. In your judgment would the enactment of additional inhibiting legislation require the employment of more stringent credit granting criteria than presently utilized? yes no

Please explain: